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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,395	08/14/2003	Michael S.H. Chu	MIY-P01-024	9490
Patent Group Ropes & Gray LLP One International Place Boston, MA 02110			EXAMINER RYCKMAN, MELISSA K	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 06/29/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/642,395

Applicant(s)

CHU ET AL.

Examiner

MELISSA RYCKMAN

Art Unit

3773

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/26/09.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16, 17, 19, 20, 22-33 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) 25-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16, 17, 19 and 36-40 is/are rejected.
- 7) ☒ Claim(s) 20 and 22-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to claims filed 5/26/09.

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14,16,17,19, and 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Li (U.S. Patent No. 5,250,054).

Li teaches a delivery device for delivering an implant (46) to an anatomical site in a body of a patient, the device comprising:

- an implant (46)
- a handle (40)
- a shaft (24, Fig. 2) having proximal and distal ends and attached to the handle at the proximal end, the distal end having a curved section (Fig. 2) and the proximal end having a substantially straight section
- a pusher tube (4) slideably fitted over the shaft (24) and extending from the handle distally along the substantially straight section of the proximal end of the shaft
- a pushing mechanism (38) operatively interconnected with the handle for actuating the pusher tube distally along the substantially straight section of the proximal end of the shaft to push an implant into the anatomical site

- wherein the pusher tube (4) is adapted to form an operative connection (*adapted to form* an operative connection with 46) with the implant along the substantially straight section of the proximal end of the shaft (when 46 is configured to go near the proximal end of 46 an operative connection is adapted to form around the outside of the shaft)
- the pusher tube (4) and the pushing mechanism (38) are integrated into a single assembly (move together as shown in Figs. 2 and 3)
- the handle (40) includes a first axially extending recess (space where 44 moves within as shown in Figs. 1-3) and the pushing mechanism includes a first axially (44) extending tongue for slideably interfitting with the first axially extending recess
- the handle includes a first stop (42) located at a distal end of the first axially extending recess and a the first axially extending tongue (44) includes a projection located at a proximal end for engaging with the first stop (fig. 1) to limit axial motion in a distal direction of the first tongue relative to the handle (figs. 1-3)
- the first axially extending tongue (44) includes a first projection located at a proximal end for engaging with a proximal end of the first axially extending recess to limit axial motion in a proximal direction of the first tongue relative to the handle (Figs. 1-3)
- a second axially extending tongue, recess and stop (col. 8, ll. 26)

- the pushing mechanism (38) slideably interfits over the shaft (24) and includes a pusher button (38) for actuating the pushing mechanism (Figs. 1-3)
- the pusher button (38) includes a reduced diameter portion for accommodating a finger of a medical operator (36)
- the implant (46) can act as a sling (46 can act as a sling)
- the pusher tube remains proximal to the curved section (Fig. 2, is capable of being used when the pusher tube is only proximal of the curved section)
- the pusher tube has a length and the substantially straight section has a length, and the pusher tube length is less than the substantially straight (Fig. 3, 4 is shorter than 24/30)
- the pusher tube forms a non-overlapping connection interface with the implant (capable of forming a non-overlapping connection interface with the implant, the claim does not have any structural limitations)

Allowable Subject Matter

Claims 20 and 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment dated 10/30/08 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MELISSA RYCKMAN** whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR
/Melissa Ryckman/
Examiner, Art Unit 3773

/Julian W. Woo/
Primary Examiner, Art Unit 3773